

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

TOMAS ESTRADA,

Plaintiff,

vs.

Civ. No. 09-392 MV/RHS

DONA ANA COUNTY DETENTION  
CENTER, et al.,

Defendants.

**REPORT AND RECOMMENDATION FOR  
DISMISSAL WITHOUT PREJUDICE**

**THIS MATTER** comes before the undersigned on referral from the trial court asking for a Report and Recommendation as to whether Plaintiff's Complaint should be dismissed with prejudice.

**Background**

This case commenced with the filing of Plaintiff's Prisoner's Civil Rights Complaint on April 23, 2009 (docket no. 1). On August 12, 2009, the Court entered its Order for Service of Process to serve the summons and complaint personally upon the Defendant(s) as may be directed by the Clerk (docket no. 11). Pursuant to that Order, the Clerk of the Court mailed the Plaintiff the civil summons and USM 285 forms via United States Postal Service on November 25, 2009. Plaintiff was to have completed the USM 285 forms and returned them together with the civil summonses to the Clerk of the Court who would thereafter forward them to the U.S. Marshall for service of process. As of the date and time of the filing of this Report and Recommendation, the Clerk of the Court has not received the civil summonses and USM 285

forms from the Plaintiff. Prosecution of the above-captioned cause cannot go forward until the Plaintiff returns the civil summonses and USM 285 forms.

On September 24, 2009, the trial court dismissed Plaintiffs Carroll and Wilson. Thereafter, on January 13, 2010, the undersigned entered its Order to Show Cause directing the Plaintiff to show cause, if any he has, why the trial court should not dismiss this case for failure to prosecute as a result of Plaintiff's failure to return the civil summonses and USM 285 forms sent to him on November 25, 2009 via the United States Postal Service. Plaintiff was given until February 8, 2010, to show cause. Plaintiff failed and/or refused to respond to the Order to Show Cause in any manner. The undersigned can now only conclude that Plaintiff no longer wishes to prosecute this action.

Rule 41.1 of the Local Rules of Civil Procedure for the United States District Court, District of New Mexico, provides that a civil action may be dismissed if, for a period of ninety (90) days, no steps are taken to move the case forward. The Clerk will give written notice that the action may be dismissed thirty (30) days after the date of the notice, unless good cause is shown. The undersigned has made every effort to allow the Plaintiff the opportunity to address his failure and/or refusal to return the civil summonses and USM 285 forms and this has been met with no response from Plaintiff.

**Recommendation**

It is respectfully recommended that the trial court order and direct the Clerk of the Court to proceed in compliance with Rule 41.1 of the Local Rules of Civil Procedure for the United States District Court, District of New Mexico, and immediately give written notice to the

Plaintiff that the action will be dismissed thirty (30) days after the date of the notice, unless good cause is shown.

Robert Hayes Scott  
ROBERT HAYES SCOTT  
UNITED STATES MAGISTRATE JUDGE